



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CIVIL CASE NO. 11 OF 2014**

ROBA DOTI GUYO..... PLAINTIFF

-VS-

JIANG ZHONGMEI ENGINEERING COMPANY..... DEFENDANT

**JUDGMENT**

1. The plaintiff Roba Doti Guyo filed this suit against the defendant seeking the following orders;

- (a) **General damages for pain, suffering and loss of amenities.**
- (b) **Special damages of Kshs 20,000**
- (c) **Costs of this suit and interest.**

2. The plaintiffs case was that he had been employed by the defendant as a ballast machine crusher labourer/operator when on 19<sup>th</sup> June 2013 while in the course of his employment while trying to remove a stuck stone using his right hand from the defendant's crusher, the defendant, its agent and or servants abruptly started/turned on the crusher whereupon his right hand was crushed thereby sustaining serious bodily injuries.

3. The plaintiff contended that he sustained the said injuries as a result of the defendant's negligence. The particulars of negligence were particularized as follows:

- (a) ***Turning on the crusher machine abruptly and without any warning to the plaintiff.***
- (b) ***Failing to provide the plaintiff with any protective gear in view of the nature of his job.***
- (c) ***Exposing the plaintiff to a risk it (defendant) could foresee before hand by failing to secure/fence off the ballast crusher machine.***
- (d) ***Failing to create a congenial working environment for the plaintiff while he was engaged in its employment.***

(e) *Generally, failing to heed the mandatory requirements of the Factory Act.*

4. The defendant was duly served with the Summons to Enter Appearance and Plaint but did not enter appearance nor file defence whereupon interlocutory judgment was entered against the defendant and the matter proceeded to formal proof. This suit therefore proceeded undefended.

5. It was submitted for the plaintiff that he was at the material time lawfully engaged by the defendant as an employee, when he was instructed by the defendant's supervisor to remove some stones from a crusher machine while the machine was in its idle mode, when all over a sudden the defendant's employees/agents switched the power on without notice as a result whereof the plaintiff in the process suffered crush injury. The plaintiff contended that the accident occurred as a result of the defendant's negligence and that in the absence of any defence or evidence from the defendant to the contrary, the court is bound to believe the plaintiff's version as the correct one.

6. I have carefully considered the evidence adduced in this case, the submissions by the plaintiff's counsel and the authority relied upon by the plaintiff. It is not in dispute that the plaintiff sustained serious injuries while in the course of employment with the defendant. It was submitted for the plaintiff that he must have lost a lot of blood and gone through a lot of pain and that the plaintiff was treated and admitted at Marsabit Hospital and later at AIC Kijabe hospital for almost a month and that he experiences a lot of pain on the ugly stump left after amputation of his right arm level. The plaintiff complains of chronic pain at the amputation site, which has extensive scarring due to healing via secondary intention. He permanent disability of his dominant right upper limb rendering him occupationally wanting.

7. On quantum, it was submitted for the plaintiff that taking into account all the relevant factors, the degree, nature and squella of the plaintiff injuries and their long term implications, Kshs 8,000,000 would be adequate compensation as general damages for pain suffering and loss of amenities.

8. In the instant case it is not in dispute that the plaintiff's right arm was crushed while in the course of his employment with the defendant subsequently leading to amputation of the same. The plaintiff must as a result have undergone immense pain. That the nature of the injuries he sustained are permanent as per medical report exhibit P4 (a) rending him occupationally wanting.

9. Mr. Riungu learned counsel appearing for the plaintiff sought an award for general damages of Kshs. 8,000,000/- for pain suffering and loss of amenities and proven special damages. Mr. Riungu learned counsel in his submissions relied on the case of **Abubakar Boda Galano vs T.S.S. Transporters Ltd in Malindi HCCC. No. 46 of 2009** in which Hon. Lady Justice H.A. Omondi awarded Kshs. 2,700,000/- as general damages. In the said case the plaintiff had suffered hand injuries with loss of consciousness and amputation of the left upper limb, deep cuts along the left eye and cheek and massive blood loss.

10. The cited case by the plaintiff is useful and relevant to a certain extent but as noted the plaintiff in the instant case herein suffered less injuries compared to the plaintiff in the case cited by the plaintiff's counsel. The plaintiff in this suit sustained severe crushing of the right arm with markedly reduced vascular supply. That surgical debridement and guillotine amputation at the arm level was done. He complains of chronic pain at the operation site and he has extensive scarring due to healing via secondary intention. He has also sub-clinical depression due to psychological detriment of limb loss. He suffered permanent disability of his dominant right upper limb rendering him occupationally wanting.

11. In my opinion and having considered the nature of the injuries sustained by the plaintiff involving his dominant right upper limb which was amputated at arm level and also taking into account that the case relied upon was decided on 15<sup>th</sup> June 2011 and taking into account the high rate of inflation since then, I find that an assessment of general damages for pain, suffering and loss of amenities of Kshs. 2,500,000/- would be appropriate. On special damages the plaintiff had sought special damages of Kshs. 20,000/-. The plaintiff produced receipts in support of special damages through exhibits P4 for

Ksh. 4000/- exhibit 5 for Kshs. 2120/- totaling to Kshs. 6,120/-.

12. I am therefore satisfied that the plaintiff has proved his claim on balance of probability against the defendant and I enter judgment on liability against the defendant at 100 per cent. I further enter judgment in favour of the plaintiff on general damages and special damages as follows:-

(a) **Kshs. 2,500,000/- general damages for pain suffering and loss of amenities.**

(b) **Special damages Kshs. 6120/- for special damages.**

**the date of filing the suit while interest on general damages shall be from the date of this judgment.**

**DATED at Meru this 22<sup>nd</sup> October, 2015.**

**J.A. MAKAU**

**JUDGE**

**22.10.2015**

**Delivered in open court in the presence of:**

Mr. Riungu for plaintiff

Non appearance for the defendant.

**F. GIKONYO**

**JUDGE**

**22.10.2015**